

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

CLIFTON E. MCLEAN,

Petitioner,

v.

**Civil Action No. 2:07 CV 83
(Maxwell)**

JOYCE FRANCIS, Warden,

Respondent,

ORDER

It will be recalled that, on October 18, 2007, *pro se* Petitioner Clifton E. McLean instituted the above-styled civil action by filing an Application Under 28 U.S.C. § 2241 For Writ of Habeas Corpus By A Person In Federal Custody.

It will further be recalled that the case was referred to United States Magistrate Judge James E. Seibert for initial review and report and recommendation in accordance with Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

After conducting an initial screening and review, United States Magistrate Judge James E. Seibert issued a Report And Recommendation on October 26, 2007, wherein he recommended that the Petitioner's Application Under 28 U.S.C. § 2241 For Writ Of Habeas Corpus By A Person In Federal Custody be denied and dismissed with prejudice.

In his Report And Recommendation, Magistrate Judge Seibert provided the parties with ten (10) days from the date they were served with a copy of said Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this

Court based upon said Report And Recommendation. According to the docket in the above-styled civil action, the Petitioner received a copy of Magistrate Judge Seibert's Report And Recommendation on October 29, 2007, and any objections to the Magistrate Judge's Report And Recommendation were required to be filed on or before November 9, 2007.

On November 8, 2007, the Petitioner filed a Motion To Enlarge Time To Respond To Magistrate Judge Recommendation wherein he requested a forty-five day extension of time in which to file objections to Magistrate Judge Seibert's October 26, 2007, Report And Recommendation. Said Motion To Enlarge Time To Respond was granted by Order entered December 4, 2007. The Court's December 4, 2007, Order provided for the Petitioner to file any desired objections to Magistrate Judge Seibert's October 26, 2007, Report And Recommendation on or before January 21, 2008.

On January 29, 2008, the Clerk of Court received from the Petitioner a letter dated January 23, 2008, wherein the Petitioner requested an additional forty-five days in which to file objections to Magistrate Judge Seibert's October 26, 2007, Report And Recommendation. In support of his request, the Petitioner advised that he was awaiting the receipt of certain discovery documents. The Petitioner's January 23, 2008, letter was filed by the Clerk of Court and docketed as a Motion For Extension Of Time. The Petitioner's second Motion For Extension Of Time was granted by Order entered February 29, 2008. The Court's February 29, 2008, Order directed the Petitioner to file any desired objections to Magistrate Judge Seibert's October 26, 2007, Report And Recommendation on or before April 14, 2008.

On April 29, 2008, the Clerk of Court received from the Petitioner a letter dated April 28, 2008, wherein the Petitioner requested an additional forty-five days in which to file objections to Magistrate Judge Seibert's October 26, 2007, Report And Recommendation. In support of this request, the Petitioner advised that the United States Department of Justice

was processing his request for discovery material. The Petitioner's April 28, 2008, letter was filed by the Clerk of Court and docketed as a Motion For Extension Of Time. The Petitioner's third Motion For Extension Of Time was granted by Order entered May 8, 2008. The Court's May 8, 2008, Order directed the Petitioner to file any desired objections to Magistrate Judge Seibert's October 26, 2007, Report And Recommendation on or before June 23, 2008. Additionally, the Court's May 8, 2008, Order cautioned the Petitioner that no further extension of time in which to file any desired objections would be granted.

The Court's review of the docket in the above-styled civil action has revealed that, to date, no objections to Magistrate Judge Seibert's October 26, 2007, Report And Recommendation have been filed by the Petitioner.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Upon consideration of Magistrate Judge Seibert's October 26, 2007, Report and Recommendation, and having received no written objections thereto, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert on October 26, 2007, be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's Application Under 28 U.S.C. § 2241 For Writ Of Habeas Corpus By A Person In Federal Custody (Docket No. 1) be, and the same is hereby, **DENIED and DISMISSED with prejudice.** It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit. The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner and to counsel of record in the above-styled civil action.

ENTER: February 25, 2009

/S/ Robert E. Maxwell

United States District Judge